

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RAMON JAQUEZ, :
Plaintiff, : 21-CV-2431 (JMF)
-v- :
MEMORANDUM OPINION
DORM COMPANY CORPORATION, :
Defendant. :
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JESSE M. FURMAN, United States District Judge:

Defendant's motion to dismiss is hereby DENIED, substantially for the reasons set forth in the Court's oral decision denying a substantially similar motion in *Romero v. Adagio Teas, Inc.*, 20-CV-7422, ECF No. 39, at 3-6.¹ Simply put, Defendant's arguments about mootness and standing turn on factual issues that are in dispute. Notably, the Court entered an Order on July 12, 2021, alerting the parties to its decision in *Romero* and directing Defendant "to address the impact, if any, of the Court's decision" in the event that, in light of the decision, it "wishe[d] to continue pressing its motion." ECF No. 18. Remarkably, although Plaintiff cited the Court's decision in his opposition, *see* ECF No. 19, at 8, 12-13, and even attached a copy of the transcript, *see* ECF No. 19-2, Defendant did not even cite, let alone address, the Court's decision.

¹ In its initial memorandum of law, Defendant did raise one argument not raised in *Romero*, namely that Plaintiff's request for "civil penalties and punitive damages" under the New York City Human Rights Law should be dismissed. The Court need not and does not address the argument, however, because Defendant "conspicuously dropped the argument in its reply brief and, thus, it can be deemed abandoned." *Sys. Agency v. Villanueva*, No. 19-CV-6486 (JMF), 2020 WL 7629879, at *2 (S.D.N.Y. Dec. 22, 2020).

Defendant shall file its Answer **no later than two weeks from the date of this**

Memorandum Opinion and Order. Additionally, it is hereby ORDERED that counsel for all parties appear for an initial pretrial conference with the Court on **August 31, 2021, at 4:00 p.m.** The parties should join the conference by calling the Court's dedicated conference line at (888) 363-4749 and using access code 542-1540, followed by the pound (#) key. (Members of the public and press may also attend using the same dial-in information; they will not be allowed to speak during the conference.) As stated in Rule 2(B)(i) of the Court's Individual Rules and Practices in Civil Cases, **no later than 24 hours before the conference**, the parties shall send a joint email to the Court with a list of counsel who may speak during the teleconference and the telephone numbers from which counsel expect to join the call. More broadly, counsel should review and comply with the rules and guidance regarding teleconferences set forth in the Court's Individual Rules and Practices.

Counsel are directed to confer with each other prior to the conference regarding settlement and each of the other subjects to be considered at a Federal Rule of Civil Procedure 16 conference. Additionally, in accordance with Rule 2(D) of the Court's Individual Rules and Practices, the parties are hereby ORDERED to file on ECF a joint letter, described below, as well as a proposed Civil Case Management Plan and Scheduling Order attached as an exhibit to the joint letter, no later than **Thursday of the week prior to the initial pretrial conference.**

The parties shall use this Court's form Proposed Civil Case Management Plan and Scheduling Order, which is also available at <https://www.nysd.uscourts.gov/hon-jesse-m-furman>. Any open legal issues can be addressed at the conference.

The joint letter shall not exceed five (5) pages, and shall provide the following information in separate paragraphs:

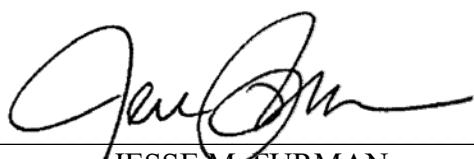
- (1) A brief statement of the nature of the action and the principal defenses thereto;
- (2) A brief explanation of why jurisdiction and venue lie in this Court.
- (3) A statement of all existing deadlines, due dates, and/or cut-off dates;
- (4) A brief description of any outstanding motions;
- (5) A brief description of any discovery that has already taken place and of any discovery that is necessary for the parties to engage in meaningful settlement negotiations;
- (6) A list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any;
- (7) A statement confirming that the parties have discussed the use of alternate dispute resolution mechanisms and indicating whether the parties believe that (a) a settlement conference before a Magistrate Judge; (b) participation in the District's Mediation Program; and/or (c) retention of a privately retained mediator would be appropriate and, if so, when in the case (e.g., within the next sixty days; after the deposition of plaintiff is completed; after the close of fact discovery; etc.) the use of such a mechanism would be appropriate; and

Any other information that the parties believe may assist the Court in advancing the case to settlement or trial, including, but not limited to, a description of any dispositive issue or novel issue raised by the case.

The Clerk of Court is directed to terminate ECF No. 15.

SO ORDERED.

Dated: August 5, 2021
New York, New York



JESSE M. FURMAN
United States District Judge